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Paper No. 13

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**OFFICE OF PETITIONS**

In re Application of	:	
GioK Djien	:	
Application No. 10/690,740	:	ON PETITION
Filed: 10 October, 2003	:	
Atty Docket No. G6A1	:	

This is a decision on the paper filed on 16 October, 2005, which is treated as a petition to withdraw the holding of abandonment.

This application became abandoned on 23 November, 2004, for failure to file a proper reply to the Notice of Non-Compliant Amendment mailed on 22 October, 2004, which set a one (1) month period for reply. On 20 November, 2004, petitioner filed a reply to the Notice mailed on 22 October, 2004, but the reply did not meet the requirements of 37 CFR 1.121, and a Failure to Acceptably Respond to Notice of Non-Compliant Amendment was mailed on 24 February, 2005, stating that the period for reply set forth in the Notice of Non-Compliant Amendment continues to run, and that extensions of time of up to five (5) months could be obtained. A reply was filed on 12 April, 2005. On 4 October, 2004, a Notice of Abandonment was mailed, stating that the replies filed on 10 November, 2004, and 12 April, 2005, do not constitute a proper reply, or a bona fide attempt at a proper reply to the non-final Office action.

Petitioner's contention that the reply filed in response to the Notice mailed on 24 February, 2005, was timely filed is incorrect. The 24 February, 2005, Notice stated:

...

The period for reply continues to run from the mailing date of the prior Notice of Non-Compliant Amendment...No new time period for reply is provided in this communication.

If the period for reply set forth in the Notice of Non-Compliant Amendment has expired, this application will become abandoned unless applicant: (1) corrects the deficiency, and (2) obtains an extension of time under 37 CFR 1.136(a). In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the prior Notice of Non-Compliance Amendment (37 CFR 1.121).

...

As such, the Failure to Acceptably Respond to Notice of Non-Compliant Amendment stated that the time period set in the prior Notice continued to run. As that Notice set a one (1) month period, the period for reply expired on 23 November, 2004. Extensions of time were available as set forth in the Failure to Acceptably Respond to Notice of Non-Compliant Amendment, however applicant neither requested and paid for any extensions of time nor corrected the deficiency. As such the application is properly held abandoned.

The petition is **DISMISSED**.

The petitioner may want to consider filing a petition to revive under 37 C.F.R. 1.137(b).

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision. Extensions of this time period are available in accordance with the provisions of 37 C.F.R. § 1.136(a).


Further correspondence with respect to this matter should be addressed as follows:

By mail:            Mail Stop Petition  
                      Commissioner for Patents  
                      P.O. Box 1450  
                      Alexandria, VA 22313-1450

By FAX:            (571) 273-8300  
                      Attn: Office of Petitions

By hand:            Customer Service Window  
                     Mail Stop Petition  
                     Randolph Building  
                     401 Dulany Street  
                     Alexandria, VA 22314

Telephone inquiries related to this decision should be directed  
to the undersigned at 571-272-3231.

  
Douglas I. Wood  
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Office of Petitions